

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

DAVID HICKS AND KAREN HICKS

PLAINTIFFS

vs.

CASE NO.: CV07-11756 / *11/14*

UNION PACIFIC RAILROAD COMPANY

DEFENDANT

COMPLAINT

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Pat. O'Brien, Pulaski Circuit Clerk

Come now the Plaintiffs, David Hicks and Karen Hicks, by and through counsel, Thomas H. McGowan, Provost Umphrey, L.L.P., and for their cause of action against the Defendant, Union Pacific Railroad Company, state and allege as follows:

Parties

1. Plaintiff, David Hicks, was at all pertinent times a citizen and resident of the State of Arkansas and specifically a resident of Garland County, Arkansas.
2. Plaintiff, Karen Hicks, was at all pertinent times hereto, a citizen and resident of the State of Arkansas and specifically a resident of Garland County, Arkansas, and is the spouse of Plaintiff David Hicks.
3. At all times mentioned herein, Defendant was and is a foreign for-profit corporation organized and existing under the law of the State of Nebraska, which has in the past and currently does business and maintains a corporate presence in the State of Arkansas as a railroad, whose principal place of business within the State is in Pulaski county, and whose registered agent for service of process is William H. Sutton, 400 W. Capitol Ave., Suite 2000, Little Rock, Arkansas 72201.

Venue and Jurisdiction

4. The events herein complained of occurred in White County, Arkansas. The Plaintiffs are residents of Garland County, Arkansas. The Defendant, Union Pacific Railroad, does business in Arkansas, and maintains a corporate presence in Little Rock,

Pulaski County, Arkansas. Venue is proper in the Circuit Court of Pulaski County, Arkansas.

5. The lawsuit arises out of injuries sustained by Plaintiff David Hicks while performing his duties as a Federal Railroad Administration inspector on Defendant's tracks and premises near Bald Knob, White County, Arkansas, on March 28, 2006. Said injuries arose out of the negligence of the Defendant, more particularly described below. Accordingly, this Court has jurisdiction over the subject matter, personal jurisdiction over the parties and venue is proper in this Court.

Facts - Cause of Action

6. On March 28, 2006, Plaintiff David Hicks, a Federal Railroad Administration inspector, was acting in the course and scope of his duties, and was a business invitee of Defendant.

7. On March 28, 2006, Plaintiff David Hicks was performing a pre-departure mechanical inspection of railroad freight cars for Defendant, Union Pacific Railroad, near Bald Knob, White County, Arkansas. During such inspection, Plaintiff David Hicks was injured when he stepped in a hole that he could not see or avoid due to the general unsafe conditions there and then existing on the property and premises of the Defendant.

Facts - Liability of Defendant

8. The accident set forth herein was a proximate cause of injuries and damages to Plaintiff, set out in more particular detail hereinafter. Defendant was negligent in its failure to maintain its property in a safe condition for business invitees. The injuries sustained by Plaintiff David Hicks were as a proximate result of the negligence of Defendant and/or its agents and employees.

9. That Defendant's agents and employees knew, or should have known, of the danger the conditions posed and nonetheless failed to take precautions for the safety of business invitees such as the Plaintiff.

10. The aforesaid conditions on the premises of Defendant had been created by Defendant and/or allowed to remain in said condition for a significant period of time such that it should have been corrected for the safety of business invitees such as the Plaintiff.

11. Defendant had a duty to warn of hidden dangers on its property, and failed to warn Plaintiff David Hicks, of such hidden dangers.

12. Defendant had superior knowledge of an unreasonable risk of harm to business invitees such as Plaintiff, David Hicks, and failed to inform Plaintiff.

13. Defendant had a duty to use ordinary care to maintain the premises in a reasonably safe condition for the safety of business invitees such as Plaintiff, and failed in its duty to the harm and detriment of the Plaintiff.

Damages

14. The negligence of Defendant is a proximate cause of Plaintiff's injuries and damages. Plaintiff, as a result of the negligence of the Defendant herein, sustained injuries and other compensable damages, including, but not limited to:

- (a) medical expenses incurred in the past;
- (b) pain and suffering, past, present and future;
- (c) mental anguish, past, present and future;
- (d) reasonable medical expenses to be incurred in the future;
- (e) loss of earnings, past, present and future;
- (f) scars, disfigurement, and visible results of injury;
- (g) permanent disability;
- (h) loss of earning capacity, past, present and future; and,
- (i) other compensable damages allowed by law.

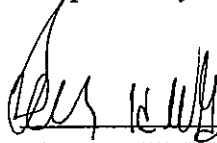
15. Plaintiff Karen Hicks, as the spouse of David Hicks, has suffered loss of consortium due to injuries suffered by Plaintiff David Hicks as a result of Defendant's negligence, and seeks compensation for the reasonable value of any loss of the services,

society, companionship, and marriage relationship of her husband proximately caused by the negligence of Defendant.

16. Plaintiffs pray for a trial by jury.

WHEREFORE the Plaintiffs, David Hicks and Karen Hicks, pray for a jury trial; for judgment against Defendant, Union Pacific Railroad Company, in an amount sufficient to justly compensate them for their damages set forth hereinabove. Plaintiffs further pray for their court costs, interest, attorneys' fees, and all other just and proper relief to which they may be entitled.

Respectfully submitted,



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